

MAY 1959

JAMES R. BROWN, Jr. Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~914~~ 80

PAN-AMERICAN PETROLEUM CORPORATION,
a Delaware Corporation, *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE In and
For New Castle County, and the Honorable Andrew
D. Christie, sitting as Judge of that Court, and CITIC
SERVICE GAS COMPANY, a Delaware Corporation,
Respondents.

No. ~~915~~ 81

TEXACO, INC., a Delaware Corporation, *Petitioner*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE In and
For New Castle County, and the Honorable Andrew
D. Christie, sitting as Judge of that Court, and CITIC
SERVICE GAS COMPANY, a Delaware Corporation,
Respondents.

**APPENDICES TO PETITIONS FOR WRITS OF
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OF THE STATE OF DELAWARE**

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APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

670 and 708 Civil Actions, 1958

CITIES SERVICE GAS COMPANY, A corporation, *Plaintiff*

v.

COLUMBIAN FUEL CORPORATION, A corporation, *Defendant*

671 Civil Action, 1958

CITIES SERVICE GAS COMPANY, A corporation, *Plaintiff*

v.

THE TEXAS COMPANY, A corporation, *Defendant*

Opinion

November 12, 1959

On defendants' motion for summary judgment. Denied.
John J. Morris, Jr. and Howard L. Williams (Morris, James, Hitchens & Williams) Attorneys for Plaintiff; Conrad C. Mount, O. R. Stites, Joe Rolston, Gordon J. Quilter and Robert R. McCracken, all of Oklahoma City, Oklahoma, of counsel.

James M. Tunnell, Jr. and Andrew B. Kirkpatrick, Jr. (Morris, Nichols, Arsht & Tunnell) Attorneys for Defendants; Clark, Carr & Ellis, of New York, New York, of counsel, for Columbia Fuel Corporation; Paul F. Schlicher and Alfred C. DeCrane Jr., both of New York, New York, of counsel, for The Texas Company.

CHRISTIE, J.:

FACTS

Plaintiff Cities operates pipelines through which it distributes natural gas in interstate commerce for resale to its customers. Defendant Columbian produces natural gas.*

In 1949 and 1951 plaintiff and defendant entered into gas purchase contracts providing for the purchase by the plaintiff over a long period of natural gas produced by defendants in the Hugoton Field of Kansas. The contracts specified the prices to be paid for the gas.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated a minimum gas price-fixing order covering natural gas produced from the Hugoton Field. The effect of this order was to require plaintiff to pay a price higher than the price agreed upon for the gas in the contracts between plaintiff and defendant.

Plaintiff Cities did not agree to the increased rate, but paid it in order to comply with the order and thus avoid criminal penalties for violation thereof. A letter from Cities to Columbian, dated January 21, 1954, reads, in part, as follows:

"Pending final judicial determination of the said Order and beginning January 1, 1954, Cities Service Gas Company intends to pay for all gas purchased by it in the Kansas Hugoton Field in strict compliance with the terms and conditions of the said Order [the Kansas minimum price order dated December 2, 1953]. Such compliance with said Order by this Company, however, is made to avoid the penalties provided by the Kansas Statutes for a violation thereof, and the payments made to you in compliance with said Order pending its final judicial determination are to be considered and accepted by you as involuntary payments

* The facts in Civil Action 670, 1958, against Columbian Fuel Corporation are set out because they are, in all material respects, illustrative of the facts in all three actions.

on our part, without prejudice to our rights in said litigation, and in no event as an acquiescence by us in the validity of said Order.

"In the event the said Order is finally judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas purchased during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Thereafter, upon each voucher check sent from Cities to Columbian, there was the notation that payment was made subject to the provisions of the letter dated January 21, 1954.

On June 7, 1954, the United States Supreme Court held that the Federal Power Commission had authority under the Natural Gas Act to regulate sales by producers to interstate pipelines for resale. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).

The Natural Gas Act enacted by Congress on June 21, 1938, had conferred upon the Federal Power Commission general jurisdiction to regulate the sale in interstate commerce of natural gas for resale. 15 U.S.C. §717(b). After the Natural Gas Act was enacted and before the *Phillips* decision, the FPC had consistently disclaimed jurisdiction over sales by producers at the wellhead, in the belief that these sales were not sufficiently related to interstate commerce. A few days after the *Phillips* decision, on July 16, 1954, the FPC implemented the holding by promulgating FPC Order 174 (subsequently superseded by Order 174-A on August 6, 1954, and still later amended by Order 174-B, in respect not here material), requiring all independent producers such as Columbian to file as their rate schedules "the basic contract and all supplements and agreements amendatory thereof effective and applicable on and after June 7, 1954".

In November, 1954, Columbian filed with the FPC the basic gas contracts here involved and supplements thereto; together with billing statements. Thus, the original contract rates were filed, along with billing statements reflecting the increased rates paid pursuant to Kansas minimum price order. On February 25, 1955, Columbian filed an addendum to its rate schedule specifically stating that the basis for charging the price shown on the billing statements was effectuation of the minimum prices established by the State of Kansas.

The FPC advised Columbian that this material had "been accepted for filing" but that such acceptance was not to be considered approval of the rate. Cities took no part in this filing process.

On January 20, 1958, the Supreme Court of the United States held that the minimum gas order of the Corporation Commission of Kansas was void on the ground that the order was in conflict with the Natural Gas Act which vests exclusive jurisdiction upon the FPC to regulate such sales of gas in interstate commerce. *Cities Service Gas Company v. Corporation Commission*, 355 U.S. 391 (1958).

After the Supreme Court held the Kansas order invalid, plaintiff resumed payments for gas purchased at the contract price instead of the price specified in the Kansas order.

Plaintiff made demand on defendants for repayment of the difference between the "contract price" and the amounts actually paid for the gas pursuant to the Kansas price order together with lawful interest thereon. Defendants refused to make any refund, and Cities brought this action to recover the alleged overpayments. The total amount sought is \$888,357.58.

Defendants filed an answer raising a number of defenses and after much discovery filed a motion for summary judgment. The grounds originally stated as a basis for defendants' motion for summary judgment were as follows:

"1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a regulation of the State of Kansas, and plaintiff does not base its claim upon that regulation;

"2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate; and,

"3. If the Kansas regulation, had not been in effect from January 1, 1954, to July 16, 1954, or if thereafter defendant had had no rate on file with the Federal Power Commission, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, would have been that prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a), *et seq.*, and plaintiff does not base its claim upon that Act."

In the course of the briefing of the motion for summary judgment, both parties agreed that, as to the period after July 16, 1954, at least no rate may be asserted as a legal right that is other than the filed rate.

Thus, it became apparent that a major issue in this case is the determination of what rate was the "filed rate" with the FPC during the period in question.

Defendants then asserted the position that this Court lacks jurisdiction to determine the "filed rate" and that it also lacks jurisdiction to determine the status of the rates prior to July 16, 1954, since under the *Phillips* decision these matters come within the provisions of the Natural Gas Act and as such must be heard in a Federal Court.

It is obvious that the jurisdiction of this Court should be determined before the merits of the defendants' motion for summary judgment are considered.

This opinion addresses itself first to the jurisdictional issue and then to the merits of defendants' motion for summary judgment.

JURISDICTION

Defendants' contention that this Court lacks jurisdiction to try and determine the dispute is based on Section 22 of the National Gas Act which provides, in pertinent part, as follows:

"Sec. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder . . ." (15 U.S.C.A. § 717u)

Defendants maintain that after July 16, 1954, the only lawful price for the sales of natural gas by defendants to plaintiff was fixed by a rate filed with and accepted by the Federal Power Commission, that a determination of such rates by this Court would be a decision in actions at law brought to enforce a liability or duty created by the Act or a rule, regulation or order thereunder within the meaning of Section 22 of the Act.

Defendants also point to regulation § 154.21 of the Federal Power Commission which directs that no Natural Gas Company shall directly or indirectly demand, charge or collect any rate or charge . . . different from those prescribed in its effective tariff on file with the Commission.

Finally, the defendants maintain that since the whole controversy centers on what charges are required by the rates filed with the Commission under the Act, jurisdiction to determine such issue is plainly vested in the Federal Courts.

Plaintiff, on the other hand, maintains that this Court does have jurisdiction because these are common law actions in contract or for restitution, and the interpretation of the actions of the Federal Power Commission and a determination as to what constitutes the "filed rate" is not, as it is here brought before the Court, a matter over which the Federal Courts are given inclusive jurisdiction by the Natural Gas Act. Plaintiff thus maintains that the determination of a "filed rate" does not constitute the fixing of a rate.

I find defendants' contention that this Court lacks jurisdiction to be without merit. The actions here asserted are based on contracts and/or restitution and not on the Natural Gas Act. See *Cities Service Gas Company v. Skelly Oil Company*, 165 F. Supp. 31 (D.C. Delaware, 1958); *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667 (1950); *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

The plaintiff may not recover if its right to recover depends on a rate schedule which is contrary to the Natural Gas Act or any rule, regulation or order thereunder. But that is not to say that the action is based on a liability or duty created by such Act. Plaintiff merely asserts a cause of action which may not be inconsistent with federal law or regulation. If recovery is not to be inconsistent with federal law and regulation, such law and regulation must be closely studied and carefully interpreted in this Court. Still the action of this Court in interpreting the filings which have taken place will not constitute the setting of a rate and a decision of this case on its merits will not involve a decision in an action at law brought to enforce any liability or duty created by the Natural Gas Act or any rule, regulation or order thereunder.

The Natural Gas Act has provided for federal price regulation but it has not set up any machinery for adjudication of contract disputes of the type before this Court. These cases are not brought under the Act although an interpretation of what was done under the Act will be necessary to resolve the issues raised.

Since this Court has jurisdiction, it must pass upon the merits of defendants' motion for summary judgment. Such decision depends upon the status of the Kansas price order prior to July 16, 1954, and a determination of the rate filed with the FPC after that date.

VALIDITY OF KANSAS ORDER

Defendants maintain that the Kansas minimum price order was valid until the FPC entered the field. Plaintiff argues that it is settled law that the Kansas minimum price order was void *ab initio*.

Decision on this point depends largely on an interpretation of the meaning of the United States Supreme Court decision in *Phillips-Petroleum Co. v. Wisconsin*, *supra*. The problem is whether the Supreme Court there decided that federal jurisdiction was concurrent, and thus state regulation was valid until superseded by federal regulation on July 16, 1954, as defendants contend; or did it decide that federal jurisdiction was exclusive, and thus any state regulation was invalid *ab initio*, as plaintiff contends.

The first significant case in which the question arose was *Natural Gas Pipeline Co. of America v. Panoma Corp., et al.*, 349 U.S. 44 (1955). Natural Gas Pipeline Co. agreed to purchase gas from the Panoma Corp. at a price specified in a contract between them. Soon after the contract was made, Oklahoma enacted its minimum price order fixing a price somewhat higher than that provided for in the contract. Suit was brought by Panoma to force the purchaser Pipeline Co. to comply with the Oklahoma order.

The Oklahoma Supreme Court held the Oklahoma price order valid and required the purchaser Pipeline Co. to pay

the difference between the contract price and the order price for previous years and to pay the order price in the future. The court specifically held that the state regulatory order did not violate the commerce clause of the U. S. Constitution. *Natural Gas Pipeline Co. of America v. Panoma Corp., et al.*, Okla. , 271 P. 2d 354. This decision was rendered on September 15, 1953, and petitions for rehearing were denied on March 23, 1954, and on May 25, 1954. Thus, the case was decided after the passage of the Natural Gas Act, but during the period of federal disclaimer of jurisdiction over wellhead prices, and before there was any implementing federal regulation under the Act.

The *Panoma* case was appealed to the United States Supreme Court, where the Oklahoma Supreme Court decision was reversed. *Natural Gas Pipeline Co. of America v. Panoma Corp., et al., supra*. The Court holds that under the *Phillips* decision, the FPC had exclusive jurisdiction over wellhead prices. Defendants point out that the U. S. Supreme Court decision was handed down on April 11, 1955, and that by then federal regulation under the Natural Gas Act had begun. Defendants argue that the initiation of federal regulation was an important factor in the reversal.

Defendants' argument is based on an incorrect premise. In deciding a case, a court views facts and surrounding circumstances as they were at the time of the occurrence under litigation, not as of the time the case is finally decided. Applying this principle, the *Panoma* case dealt in part at least with the status of federal regulation as of 1953.

As before mentioned, in 1953 the Natural Gas Act lay unimplemented on the books, there being a federal disclaimer of jurisdiction over wellhead prices. This was the situation to which the U. S. Supreme Court looked when in *Panoma, supra*, it held the Oklahoma Order invalid. It thus appears that if the state regulation was invalid even in the absence of federal regulation, there never was a time

when it could be valid, i.e., it was void *ab initio*. So viewed, the *Panoma* case controls the present one on this point.

The Supreme Court in *Panoma* noted a dissent by Mr. Justice Douglas in the following language:

"Mr. Justice Douglas being of the opinion that state regulation is permissible until the federal price regulation permitted by *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 98 L.Ed. 1035, 74 S.Ct. 794 is imposed, dissents."

It thus appears that the question whether state minimum gas price orders could stand until federal regulation was imposed was considered by the Supreme Court in conference and the views of Mr. Justice Douglas were rejected.

Later, when the United States Supreme Court held the Kansas minimum price order invalid in *Cities Service Gas Co. v. State Corporation Commission*, 355 U.S. 391 (Jan. 20, 1958), the Court, in an opinion by the whole Court, simply stated:

"Per curiam: The judgment is reversed. *Phillips Petroleum Company v. Wisconsin*, 347 U.S. 672, 98 L. Ed. 1035, 74 S.Ct. 794; *Natural Gas Pipeline Co. v. Panoma Corp., et al.*, 349 U.S. 44, 99 L.Ed 866, 75 S.Ct. 576."

The absence of a dissent by Mr. Justice Douglas on this occasion seems to indicate either that his views were still unacceptable to the majority of the court and he did not see fit to urge them further, or that he had acquiesced in the majority view. In any event, the Supreme Court followed its reasoning in the *Panoma* case and held the Kansas regulation invalid from its inception.

The above analysis of the decisions of the United States Supreme Court appears to have been accepted in part at least in the Fifth Circuit in *Natural Gas Pipeline Co. of America v. Harrington*, 246 F. 2d 915, cert. denied 356 U.S.

957 (1958); by the Third Circuit in *Natural Gas Pipeline Co. of America v. Federal Power Commission*, 253 F. 2d 3, cert. denied 357 U.S. 927 (1958); and by the Tenth Circuit in *Cities Service Gas Co. v. Federal Power Commission*, 255 F. 2d 860, cert. denied 358 U.S. 837 (1958).

In the Fifth Circuit case, a second petition for rehearing was filed by Harrington contending that the Oklahoma Order was valid to July 16, 1954. This contention was rejected by the Court in its 253 F. 2d 231 per curiam order dated March 5, 1958, wherein the Court said:

"Per curiam: Leave to file a second petition for rehearing is denied. *Natural Gas Pipeline Co. of America v. Panoma*, 349 U.S. 44. The notation of Mr. Justice Douglas' dissent shows that the Court considered the question presented by this second petition for rehearing."

Finally, the Supreme Courts of Oklahoma and of Kansas have decided against the proposition advanced by the defendants here. The Oklahoma Supreme Court issued an order to the Oklahoma Corporation Commission on March 20, 1958, which read, in pertinent part, as follows:

"That Order No. 26096 of the corporation commission of the State of Oklahoma which is the subject of appeals to this Court and the Supreme Court of the United States be, and the same is, hereby reversed, set aside and held for naught in its entirety."

The Kansas Supreme Court, in *Cities Service Gas Co. v. Corporation Commission*, 184 Kan. 540, 337 P. 2d 640, cert. denied October 12, 1959, held that the Kansas minimum price order,

"invaded the jurisdiction of the Federal Power Commission and was not within the jurisdiction of the State Corporation Commission to enter, even though the

Federal Power Commission had not exercised jurisdiction in the matter."

This Court has read with care the provocative dissenting opinion of Patzer, P., in the Kansas case. However, I regard the opinion of the majority as better reasoned and it is now the well established view.

In my opinion, the Kansas minimum price order was void *ab initio* and never legally imposed any obligation on Cities to pay a price for gas different from that expressed in the gas purchase contracts.

As to the period before July 16, 1954, the state's price regulations were void. Since there were no "filed" rates with the FPC, there was no effective governmental price regulation in this field and as between the parties, the rates specified in their contracts would govern. The argument that the only legal rate was the "filed" rate cannot find application as to the period when there was no filed rate and no one knew that rates should be filed.

As to the period prior to July 16, 1954, defendants' motion for summary judgment is without merit.

THE LEGAL RATE AFTER JULY 16, 1954

Both parties agree that as to the period after July 16, 1954, the only legal rate is the filed rate "and not even a court can authorize commerce in a commodity on other terms." *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 251 (1951). The question then becomes what rate was legally filed? Plaintiff claims that the rate filed was the contract rate, while defendant Columbian claims that the rate filed was the rate prescribed by the Kansas minimum price order.

The question is not accurately put when we ask what was the "filed rate" since obviously the rates advocated by each party were on file with the FPC. The question really is which of the rates filed with the FPC is the legal rate binding upon the parties before this Court.

Defendants' position is that their action in tendering rate schedules to the FPC and the action of the FPC in accepting these schedules for filing made the rate prescribed by the Kansas minimum price order the legally filed rate.

The letters of acceptance written by the FPC to Columbian at the time the rates were filed tend to indicate that the FPC was of the opinion that neither the unilateral act of filing by the seller (such as defendant) nor that of the Commission in accepting the rate for filing was sufficient to increase a rate over that in the original contract. Such letters contain the following qualifying provision:

"This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been made or may hereafter be made by the commission in any proceedings now pending or hereafter instituted by or against your company."

That a change in rate cannot be brought about by unilateral action was clearly established by the Supreme Court in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). The Supreme Court there explained that the original contract rate is not changed by unilateral action unless and until it is changed in a proceeding under Section 4(a) and (c) or Section 5(2) of the Act, requiring notice to the parties and an opportunity to be heard.

Since the Kansas minimum price order was void, the filing of rates involuntarily paid thereunder was no more effective than was the filing in the above cited case. See

also *Cities Service Gas Co. v. Federal Power Commission*, *supra*.

Defendants' contention that the filing of the rates paid under protest on account of the Kansas order made such rates the legal rate under the Natural Gas Act is without merit.

Defendants next attempt to establish that the rates required by the Kansas order were the contract rates because under a clause in the original gas purchase contract, the contract price can be changed at any time by an order such as that issued by the Kansas Commission. The clause reads:

"This Agreement is subject to all present and future laws and valid orders, rules and regulations of any regulatory body having jurisdiction."

According to defendants, the Kansas order was in effect until federal regulation began on July 16, 1954, and determined prices up to that time.

The clause clearly states that the agreement is subject to any subsequent "valid order". This Court has already determined that the Kansas order was void *ab initio* and thus the clause can have no application here.

Since the Kansas order is a nullity and the filing of rates required thereunder did not change the rate set up in the original contract or establish a new legal rate, what then is the rate on file with the FPC, and thus the legal rate for the period prior to July 16, 1954?

The Federal Power Commission's position on this matter, as stated in its brief to the Circuit Court in *Cities Service Gas Co. v. Federal Power Commission*, 255 F. 2d 860, cert. denied 358 U.S. 837 (1958), was that:

"Since the Kansas order has been declared invalid on the date of filing, it was never a part of the filed rate, and Cities Service is not barred by the filed rate

rate from recovering any payments made by it in excess of the contract price."

and further that the:

"rate as we have seen is the 6¢ contract rate in view of the invalidity of the Kansas order, not the 11¢ rate reflected in the billing statements."

The Circuit Court accepted the FBC position in the *Cities Service* case, *supra*, held:

"When the United States Supreme Court struck down the Kansas order there was no longer a valid order which could modify the contract rate and the contract rate was the rate effective . . ."

To the same effect is the decision of the Fifth Circuit in *Natural Gas Pipeline Co. of America v. Harrington*, *supra*, and of the Third Circuit in *Natural Gas Pipeline Co. of America v. Federal Power Commission*, *supra*.

The Court holds, as a matter of law, that implicit in the acceptance by the Commission of the Kansas minimum price order was the validity of that order. If said order were valid, the rate prescribed therein would indeed constitute the filed rate of defendants with the Federal Power Commission. However, since the Kansas order was void, the only lawful filed rate is the contract rate, unaffected by the Kansas order.

Defendants' motion for summary judgment is denied.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
 TEXACO, INC., a Delaware corporation, and PAN AMERICAN PETROLEUM CORPORATION, a Delaware corporation.
Petitioners

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR
 NEW CASTLE COUNTY, and THE HONORABLE ANDREW D.
 CHRISTIE, sitting as a Judge of that Court, *Respondents*

and

CITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondents

(February 25, 1960)

No. 69, 1959

SOUTHERLAND, C. J., and WOLCOTT and BRAMHALL, J. J.,
 sitting.

Petition for writ of prohibition to the Superior Court of
 New Castle County. Petition denied.

James M. Tunnell, Jr., of Morris, Nichols, Arshat & Tunnell, of Wilmington, Attorney for Petitioners.

Clark, Carr & Ellis, of New York City, for Petitioner
 Columbian Fuel Corporation; Paul F. Schlicher and Alfred
 C. De Crane, Jr., of New York City for Petitioner Texaco,
 Inc.; W. W. Heard of Tulsa, Oklahoma, for Petitioner Pan
 American Petroleum Corporation.

Howard L. Williams of Morris, James, Hitchens & Williams, of Wilmington, and C. C. Mount, of Oklahoma City, and Jack Werner, of Washington, D. C., for Intervening Respondents Cities Service Gas Company.

Edmund D. Lyons of Morris, James, Hitchens & Williams, of Wilmington, and John T. Grant, of Omaha, Ne-

braska, for the Northern Natural Gas Company, Amicus Curiae.

SOUTHERLAND, C. J.:

The petition attacks the jurisdiction of the court below to entertain four actions at law brought by Cities Service Company against three defendants, the petitioners above named. In these actions Cities seeks to recover from defendants large sums of money representing part of the payments made by Cities to defendants for natural gas between January 1, 1954 and late 1957.

The factual background of the claims is as follows:

Cities is a natural gas pipeline company. It transports natural gas from Hugoton Field in Kansas, in interstate commerce, to local distributing companies. Defendants are producers of natural gas from that field.

In 1949, 1950 and 1951 Cities and the defendants entered into contracts for the sale of gas by defendants to Cities at prices less than eleven cents a thousand cubic feet, measured on a pressure base of 14.65 pounds per square inch absolute. Since the execution of these contracts defendants have supplied Cities with gas from the Hugoton Field.

Prior to the execution of these contracts Congress had adopted the Natural Gas Act. Act of June 21, 1938, 15 U.S.C.A. § 717. The Federal Power Commission was empowered to regulate the sale in interstate commerce of natural gas for resale. Because of an exemption in the act the Federal Power Commission thereafter disclaimed jurisdiction over sales by producers, such as defendants.

On December 2, 1953, the Corporation Commission of the State of Kansas promulgated an order, effective, January 1, 1954, fixing a minimum price of not less than 11¢ per M.c.f., measured on a pressure base of 14.65 p.s.i.a., to be paid for natural gas produced by defendants from the Hugoton Field. Cities and others filed suit in the Kansas courts for a judicial review of the order.

On January 21, 1954, Cities wrote a letter to each of the defendants with respect to the Kansas Commission order. After stating that Cities had filed suit to obtain judicial review of the order, Cities notified the defendants that it intended to pay for gas purchased from the Hugoton Field in strict compliance with the terms of the order; that such compliance was made to avoid the penalties provided by the Kansas statutes for violation; and that payments to the defendants were to be considered and accepted by you as involuntary payments on our part, without prejudice to our rights in said litigation * * *. Cities added:

"In the event the said Order is judicially modified or declared to be invalid in whole or in part, as a result of which you have been overpaid for gas produced during the interim aforesaid, Cities Service Gas Company will expect you to refund to it the amount of said overpayments."

Each voucher check sent to each of the defendants in payment of gas purchased during the period involved in these suits contained a notation that payment was made subject to the provisions of the letter of January 21, 1954. Each defendant accepted its checks and cashed them, and made no objection to the conditions on which they were tendered.

For the sake of convenience we shall refer to these documents as "the refund contracts," recognizing that the defendants do not concede their legal effect.

On June 7, 1954, the Supreme Court of the United States, reversing a decision of the Federal Power Commission, held that rates of "all wholesales of natural gas in interstate commerce," including rates of producers, were subject to the Commission's jurisdiction. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 74 S.Ct. 794.

The Natural Gas Act requires natural gas companies to file rate schedules with the FPC, under such regulations as the Commission may prescribe. § 717c(e).

On July 16, 1954, the Commission issued order No. 174, later replacing it or supplementing it with orders No. 174-A and No. 174-B. These orders dealt with the regulation of "independent producers" under the Natural Gas Act. These producers were required to apply for certificates of public convenience and necessity, and were directed to file with the Commission "rate schedules as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954." By § 154.93 a rate schedule was defined as "the basic contract and all supplements or agreements-amendatory thereof, effective and applicable on and after June 7, 1954."

Defendants duly filed the application and documents required. These documents included copies of the contracts with Cities, copies of the Kansas Price Order, and statements showing that the price to Cities on June 7, 1954, was 11¢ per M.e.f. at the specified pressure.

As these documents were filed, the Commission duly convened and voted to accept them for filing. The Commission so notified each defendant that its schedules had been accepted without constituting the acceptance as approval of any rate or charges, and without prejudice to any orders of the Commission that might affect the company so filing.

In 1956 the Supreme Court of Kansas sustained the validity of the Kansas Corporation Commission's order of December 2, 1953 (180 Kans. 454, 304 P. 2d 528), but on appeal the Supreme Court of the United States on January 20, 1958 reversed (355 U.S. 391, 78 S.Ct. 381), citing the *Phillips* decision and the decision in *Natural Gas Pipe Line Co. v. Panoma Corporation* (1955), 349 U.S. 44, 75 S.Ct. 578.

In the *Panoma* case the Supreme Court had held in 1955 that a similar price fixing order of the Oklahoma Corporation was void. From the dissenting opinion of Mr. Justice Douglas, it seems clear that the order was held void *ab initio*.

Applying these decisions the Supreme Court of Kansas on April 11, 1959, held that the Kansas Commission's order was void *ab initio*. 184 Kan. 540, 337 P. 2d 640.

In 1958 Cities filed the four suits which are now before us. The complaints are substantially the same. They set forth the original gas contracts between the parties; the facts concerning the issuance of the Kansas price-fixing order; the refund contracts; the increased prices for gas effected by the Kansas order; and the invalidation of that order by the Supreme Court of the United States.

By reason of these facts, it is alleged that defendants agreed in writing to refund plaintiff the over-payments; that such payments were made under compulsion; that defendants are justly indebted to plaintiff in the amount of such overpayments; and that to permit defendants to retain such overpayments would constitute unjust enrichment.

The answers deny the legal effect of the refund contracts and deny that the payments were made involuntarily. The answers further set forth the facts with respect to the assumption of jurisdiction over defendants' rates of the Federal Power Commission and the filing of defendants' rate schedules, and their acceptance by the Commission. The answers further allege that the filed rate has never been decreased; that the exclusive means authorized by the Natural Gas Act and the rules of the Commission have never been utilized to contest or challenge the rate schedules; and that the rate schedules have at all times remained the legally effective rate for the sales of gas by defendants to Cities.

Subsequently the parties supplemented the record by discovery proceedings and by affidavit, and the defendants moved for summary judgment. The grounds for the motion were that the only lawful price for the sales of natural gas during the period prior to July 16, 1954, was that fixed by the Kansas order; and that during the period after July

16, 1954, the only lawful price was that fixed by the rate filed and accepted by the Commission.

Defendants' contention in support of this motion was stated in the alternative: If Cities was seeking to recover payments in excess of the contract price, it had no case, since the only lawful price for gas sold by them during the periods in question was fixed by the Kansas price order and by the rate schedules filed by the Commission. If, on the other hand, the Natural Gas Act excluded the Kansas order, then Cities was seeking to recover payments allegedly in excess of natural gas rates, in which event jurisdiction to determine the claims was vested exclusively in the federal courts by the express provisions of the Natural Gas Act.

The trial court held that the actions were suits founded on the contracts to refund excessive payments, and not on the Natural Gas Act. Agreeing with the defendants that the only legal rate is the filed rate, it held that the contract action could be maintained if it is not inconsistent with federal law or regulation. It further held that as a matter of law the only lawful filed rate is the contract rate—a ruling that the defendants assail as unnecessary because they had not tendered such an issue.

Defendants bring these rulings before us by way of a petition for a writ of prohibition.

Basic to defendants' case (in whatever form developed) is the question of jurisdiction. Has a state court jurisdiction to entertain the actions?

Section 22 of the Natural Gas Act (15 U.S.C.A. § 717n) provided in part:

"The district Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law,

brought to enforce any liability or duty created by, or to enjoin any violation of, this act or any rule, regulation, or order thereunder."

Does Cities seek to enforce a "liability or duty created by" the Act? In form, at least, its action is clearly one based on the refund contracts—not upon the contracts filed with the Commission, but upon the refund contracts by which the defendants agreed to make restitution.

But the defendants insist that, whatever the form of these actions, they are in effect actions for charges allegedly in excess of a filed rate, and therefore seek to enforce a liability created by the Act. Defendants do not point to any provisions of the Act specifically authorizing suits to recover overpayments of gas rates, such as found in the Interstate Commerce Act. Their argument runs as follows:

The filed rate, defendants say, is the only lawful rate; by federal law no deviation from it is permitted; if more or less than the filed rate is paid, such payment is a violation of federal law, and a suit to redress the wrong may be brought only in the federal courts. Hence (defendants seem to say) the refund contracts have no validity in themselves as a ground for a common law action in the state courts; any rights that Cities may have in its present situation flow from the rate provisions of the Natural Gas Act.

This leads to the question: To what extent does the Act impair the validity of private contracts relating to gas rates?

It is authoritatively settled that the Natural Gas Act, unlike the Interstate Commerce Act, does not abrogate private rate contracts as such. *United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373. In that case the gas contract between United and Mobile had been duly filed with the FPC. Later Mobile attempted to change the rate fixed in the contract by filing

a new rate schedule. The Commission accepted it, holding that it would become effective unless after investigation the Commission should determine it to be unlawful. The Supreme Court held that the rate could not be so changed by unilateral action. The Court said:

"In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts."

Referring to the provisions of Section 4 and 5 of the Act, relating to changes in rates and to the regulatory powers of the Commission, the Court also said:

"These sections are simply parts of a single statutory scheme under which all rates are established initially by the natural gas companies, by contract or otherwise, and all rates are subject to being modified by the Commission upon a finding that they are unlawful. The Act merely defines the review powers of the Commission and imposes such duties on natural gas companies as are necessary to effectuate those powers; it purports neither to grant nor to define the initial rate-setting powers of natural gas companies."

In the cases at bar the gas purchase contracts were duly filed, along with the Kansas price-fixing order. Cities never agreed to the increased rate set by that order, so that the filing of the order by the defendants was not an agreed change in the rate:

Moreover, it has been authoritatively settled that the Kansas order was void *ab initio*, as above set forth. And the federal courts have also held that the effect of that holding was to leave the contract rate as the only lawful rate. In *Natural Gas Pipeline Company v. Federal Power Commission*, (3rd CCA) 253 F. 2d 7, the distributor assailed an order of the FPC directing the filing of an increased rate based on a price-fixing order of the Oklahoma Corporation Commission, later held invalid by the Supreme Court. In reviewing the Commission's order the Third Circuit Court of Appeals said:

"The contract rate could only be changed, then, (unless the parties consented) after a hearing by the Commission as to its lawfulness unless, as set out in the agreement itself, a valid law and lawful orders of regulatory bodies having jurisdiction over the parties affected it. It was expressly because of these elements that Natural, after the Oklahoma Commission had established a minimum rate and while its lawfulness was being litigated, paid the state-fixed purchase price under protest. When the United States Supreme Court found Oklahoma's action to have been unlawful and set the state commission order aside, there was no longer even the semblance of a valid law, or lawful order which would modify the contract rate. The contract rate, therefore, under the mandate of the Supreme Court must be held to have been the rate effective on June 7, 1954."

A similar holding is found in *Cities Service Gas Co. v. Federal Power Commission* (10th CCA), 255 F. 2d 860.

If under the Natural Gas Act a gas producer and a distributor may agree to fix the rate, and from time to time to change it, absent any proceeding before the Commission to regulate the rate, why may they not agree that the rate to be paid shall be the contract rate if the rate imposed by

a State Commission shall be held invalid? This, in effect, was what the parties here agreed upon.

If so, it seems to us that the claims here are not founded upon any liability created by the Natural Gas Act, but upon a private contract deriving its force from state law.

It is certainly true that the adjudication of these claims does entail an examination of the provisions of the Natural Gas Act, the regulations of the Commission, and the applicable federal decisions. But these have been brought into the cases by way of defense to complaints which, on their face, are based on nothing more than contracts to refund amounts measured by the contract or "filed" rate and the rate fixed by the Kansas order. The general rule is that in such a case the plaintiff's suit is not one arising under federal law. *Skelly Oil Co. v. Phillips Petroleum Co.*, 70 S.Ct. 876. Cases involving patents supply familiar examples of this principle. See annotation in 167 ALR p. 1114.

There is no issue here of the reasonableness of the rate, nor any attempt to "adjudicate" a proper rate, as the defendants argue.

We are not cited to any decision of the Supreme Court of the United States authoritatively settling the question before us. There are, however, three decisions of the federal district courts involving suits brought in the state courts to recover excess payments of gas rates made under circumstances similar to those in the cases at bar. In each case the defendants attempted to remove the case to the federal court. In *Cities Service Gas Co. v. Skelly Oil Co.*, (D.C. Del. 1958), 165 F. Supp. 31, Judge Layton held that the suit was not one founded upon the Natural Gas Act, but a contract action based upon letters interchanged by the parties. He added:

"Now, it is conceded that in order to determine the exact amounts due, as well as other relevant questions, a construction of the Natural Gas Act and of the Com-

mission Rules may have to be resorted to. But as said in the Winsor case, 'Nor. * * * is the fact that a federal law may or will be drawn into construction during the course of the litigation sufficient to support jurisdiction in a federal court'."

To the same effect is *Northern Natural Gas Co. v. Cities Service Oil Co.*, decided by the United States District Court of Iowa, June 30, 1959, and *Pan American Petroleum Corporation v. Cities Service Gas Co.*, decided by the District Court of Kansas. (Both opinions are unreported.) In the latter case, as in these cases, the Kansas Corporation Commission price-order had been filed with the Commission. The Court, citing the decision of the Supreme Court respecting the effect of private contracts fixing initial rates, noted that the Commission had taken no action to change the contract rate. The court also held that the Kansas Commission had no power to modify the terms of the original agreement, and further said:

"In view of these decisions, it is clear that there is no federal question presented relative to the order of the Kansas Corporation Commission raising the contract price to 11¢, and the unilateral rate change by the Federal Power Commission. Since the law is settled, there is no federal question."

Defendants say that these are removal cases, merely directing remand, and therefore not affirmative holdings sustaining the jurisdiction of the state courts. This distinction is not convincing. At the moment, they furnish a persuasive guide to a state court confronted with a novel question not authoritatively settled by the Supreme Court. We think that we should follow their reasoning.

In support of their contention that the Natural Gas Act creates the liability in the cases before us, defendants cite decisions arising under the Interstate Commerce Act. In

view of the decision in the Mobile case, we think them inapplicable.

The conclusion that the Natural Gas Act is not inconsistent with private contracts for restitution of overpayments in cases such as those before us finds support in the case of *Natural Gas Pipeline Co. v. Harrington* (5th C.C.A., 1957), 246 F. 2d 915. That decision sustained an action for restitution of the difference between the contract rate and the price paid by Natural in compliance with an order of the Oklahoma Corporation Commission that was later declared invalid.

The Court said that any price in excess of the contract rate was "contrary to the spirit, if not the letter" of the Natural Gas Act; but it is clear to us that the Court did not hold that liability in such a suit was created by the Act; on the contrary, it clearly recognized the action as one founded on common law principles of restitution.

Defendants say that this case is not in point, because the gas contract and Oklahoma price order had not been filed with the Commission; but the Court of Appeals held that this failure did not prevent the jurisdiction of the Commission from attaching, and that the contract rate became the only lawful rate until changed by order of the Commission. On the latter point, see also *Interstate Natural Gas Co. v. Southern California Gas Co.*, 209 F. 2d 380 (9th CCA., 1953).

Defendants point to 4(a) of the Act, and to § 154.21 of the Commission's regulations, embodying the requirement for reasonable rates and the prohibition against unreasonable rates. The argument seems to be that these provisions create a liability for repayment of the amounts of excessive charges. This argument is, we think, foreclosed by the decision in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246, 71 S.Ct. 692, and *T. I. M. E. Inc. v. United States*, 359 U.S. 464, 79 S.Ct. 904. The latter case involved the Motor Carrier Act of 1935; the

former the Natural Gas Act. In the *Montana-Dakota* case, the Court, referring to the statutory rerequirement of reasonableness, said:

"But the prescription of the Statute is a standard for the Commission to apply, and independently of Commission action, creates no right which courts may enforce."

This holding was reaffirmed in the *T. I. M. E.* case.

One of the defendants urges that the *T. I. M. E.* case, which holds that there is no common law right of action for unreasonable rates under the Motor Carrier Act, is applicable to the cases before us. Since these actions are based on private contracts, we do not think that the holding in the *T. I. M. E.* case applies.

The *Montana-Dakota* case, cited above, is relied on by defendants as authority for the general proposition that "the right to a reasonable rate is the right to the rate which the Commission files or fixes, and that, except for review of the Commission's orders, the courts can assume no right to a different one." In that case the Supreme Court considered a complaint alleging fraud in preventing plaintiff from pursuing before the Federal Power Commission its remedy for a reasonable rate. The case, as we read it, holds that, on an issue of the reasonableness of the rate, the jurisdiction of the Commission is exclusive. But here, as above noted, there is no issue of the reasonableness of the filed rate.

Defendants cite our own decisions refusing in corporate election proceedings to adjudicate claimed violations of the proxy rules of the Securities and Exchange Commission in respect to the solicitation of stock proxies.

Investment Associates Inc. v. Standard Power & Light Corporation, 29 Del. Ch. 225, A. 2d , affirmed 29 Del. Ch. 593, A. 2d , was such a case. The Vice Chancellor first held that exclusive jurisdiction to determine the validity of the proxy was vested in the federal

courts, and that in any event, because of the need of uniformity in applying the act, the state courts would not entertain such a challenge. The decision was affirmed. It was later followed in *American Hardware Corporation v. Savage Arms Corporation*, Del. , 136 A. 2d 690.

In those cases we were asked to adjudicate a violation of regulations under the Securities act; here we are not asked to adjudicate any violation of the Natural Gas Act, or, in our opinion, to enforce a liability created by that Act.

Defendants argue that Cities had a remedy before the Commission. Cities should, it is said, have attacked directly the filing of the Kansas price order as a part of the rate schedules, as it did in the *Magnolia* case. *Cities Service Gas Co. v. Federal Power Commission*, 255 F. 2d 860.

The rule requiring the exhaustion of administrative remedies would certainly be applicable to a suit in the federal court attacking the reasonableness of the rate, but we think it inapplicable here, since no attack is made upon the "filed rate", which the federal courts have held to be the gas contract rate.

Defendants say that in any event Cities in attempting to attack collaterally the "filed rate", and that, whether right or wrong, the rate accepted for filing by the Commission, including the Kansas order, is the effective filed rate, and Cities is bound by it until it succeeds in having the Commission change it.

The difficulty with this argument is, once again, that the federal courts have authoritatively held that the Kansas price-fixing order was void *ab initio* because the Natural Gas Act had pre-empted the field. Being void the unilateral filing of the order as part of the rate schedules was a nullity. This is not our adjudication; it is the adjudication of the federal courts.

Defendants cite *Federal Power Commission v. Interstate Natural Gas Co.*, 336 U.S. 577, S.Ct. , as holding

that the claims for refunds from regulated gas companies are determinable solely with reference to federal law. The case concerned a fund accumulated during litigation over Interstate's rates, which had been reduced by order of the Commission. The issue was whether the fund should go solely to four pipeline companies or (at least in part) to their customers who were the ultimate consumers of the gas. The Supreme Court held that the distribution of the fund was governed by federal law and that the lower federal courts should determine the distribution between those entitled. The case does not seem to us to touch the point before us.

It is true that if Cities should recover the money for which it sues the distribution of the fund would be subject to the orders of the Federal Power Commission. See 15 F.P.C. 1448, 1453. But we do not understand the defendants to contend that the Commission is vested with power to enforce refund contracts of the kind here sued on.

Defendants seek to build an argument upon the general proposition that the Natural Gas Act leaves no room for common law obligations to do that which the Act itself requires.

This argument seems to us to assume the very point in issue, that is whether the Act itself creates the liability here sued on. This is the basic question in the case.

One final observation must be made. A great deal of argument in the defendants' briefs is directed to an attempted limitation of the issues before the Superior Court and the issues before this Court. Most of this argument seems to us to miss the point. The substantial question which emerges, in one form or another, is whether the state courts have jurisdiction to entertain the suits on the refund contracts.

For the reasons above stated, we are of opinion that such jurisdiction exists.

The petition for a writ of prohibition is denied.

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
et al., *Petitioners*,

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND
FOR NEW CASTLE COUNTY, et al., *Respondents*,
andCITIES SERVICE GAS COMPANY, a Delaware corporation,
Intervening Respondent.

No. 69, 1959

Final Judgment

THIS 18th day of March, 1960,

THE COURT having filed its opinion, dated February 25, 1960, on the petition for a writ of prohibition herein, and petitioners having filed a motion, dated March 4, 1960, asking that the operation, execution, and enforcement of its judgment on that opinion be stayed in order to permit application for a writ of certiorari to be made to the Supreme Court of the United States,

IT IS HEREBY ORDERED and ADJUDGED:

1. That the petition for a writ of prohibition is dismissed;
2. That the stay of all further proceedings in the Superior Court of the State of Delaware in and for New Castle County, in Civil Actions 670, 671, 708 and 722, 1958, contained in the order of this Court herein dated November 17, 1959, is vacated;
3. That the clerk of this Court shall return to the Prothonotary of the Superior Court of the State of Delaware in and for New Castle County the original records in Civil Actions 670, 671, 708 and 722, 1958, in that

Superior Court, together with a certified copy of this order; and,

4. That the operation, execution and enforcement of paragraphs 1, 2, and 3 hereof are stayed in their entirety for a period of thirty days from the date hereof; and, as to any of the petitioners which shall have applied to the Supreme Court of the United States for a writ of certiorari herein within that time, the operation, execution and enforcement of those paragraphs are further stayed in their entirety as to those petitioners until the entry of a final order of the Supreme Court of the United States in any certiorari proceedings.

/s/ CLARENCE A. SOUTHERLAND
Chief Justice

/s/ DANIEL F. WOLCOTT
Justice

/s/ HOWARD W. BRAMHALL
Justice

Approved as to form:

ANDREW B. KIRKPATRICK, JR.
Attorney for petitioners

.....
Attorney for intervening respondent

SUPREME COURT OF DELAWARE

Clarence A. Southerland, Chief Justice

Court House
Wilmington, Delaware

March 17, 1960

Re: Columbia Fuel Corp., et al. v. Cities Service Co.;

No. 69, 1959

James M. Tunnell, Jr., Esquire
Andrew B. Kirkpatrick, Jr., Esquire

Morris, Nichols, Arsht & Tunnell
350 DuPont Building
Wilmington, Delaware
Howard L. Williams, Esquire
Henry N. Herndon, Jr., Esquire
Morris, James, Hitchens & Williams
Bank of Delaware Building
Wilmington, Delaware

Dear Sirs:

The Court has considered the motion for a stay in the above case and the memoranda submitted in connection therewith.

All the members of the Court are of opinion that the application for a stay should be granted, for the reason that the case seems to us to be an appropriate one for the granting of the writ and that, in any event, the balance of convenience is in favor of the stay.

The Court is of opinion that a stay of thirty (30) days is sufficient.

Accordingly, the Court has signed the order in the form submitted by counsel for the petitioners with two changes:

In line 3 of page 4 the words "forty-five" have been deleted and the word "thirty" substituted therefor. In line 4 of paragraph 4 the word "shall" has been inserted after the word "which."

The order is effective as of March 18, 1960.

Very truly yours,

/s/ C. A. SOUTHERLAND

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 722

1958

CITIES SERVICE GAS COMPANY, a corporation, *Plaintiff*

v.

PAN AMERICAN PETROLEUM CORPORATION, a corporation,
Defendant

Defendant's Motion for Summary Judgment

Defendant hereby moves for summary judgment on plaintiff's claim.

The grounds for this Motion for Summary Judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was either (a) fixed by an order of the State of Kansas, or (b) if the Kansas order was inapplicable during such period of time, then the only lawful price for such sales was prescribed by the Natural Gas Act (15 U.S.C.A. §§ 717(a) *et seq.*), and plaintiff does not base its claim upon either that Order or that Act; and,

2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate.

This Motion for Summary Judgment is based upon the facts established by the pleadings and by plaintiff's an-

swers to defendant's interrogatories and plaintiff's responses to defendant's request for admissions to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered herein on May 8, 1959.

MORRIS, NICHOLS, ARSHT & TUNNELL
JAMES M. TUNNELL, JR.
James M. Tunnell, Jr.
3000 duPont Building
Wilmington, Delaware
Attorneys for Defendant

June 8, 1959

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Civil Action No. 671

1958

CITIES SERVICE GAS COMPANY, a corporation, *Plaintiff*

v.

THE TEXAS COMPANY, a corporation, *Defendant*

Defendant's Motion for Summary Judgment

Defendant hereby moves for summary judgment on plaintiff's claim.

The grounds for this Motion for Summary Judgment are that:

1. During the period from January 1, 1954, to July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was either (a) fixed by an order of the State of Kansas, or (b) if the Kansas order was inapplicable during such period of time, then the only lawful price for such sales was prescribed by the Natural Gas Act (15

U.S.C.A. §§ 717(a) *et seq.*), and plaintiff does not base its claim upon either that Order or that Act; and,

2. During the period after July 16, 1954, the *only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint herein, was fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate.

This Motion for Summary Judgment is based upon the facts established by the pleadings and by plaintiff's answers to defendant's interrogatories and plaintiff's responses to defendant's request for admissions to be filed in support hereof, and such other affidavits as are filed herein pursuant to the schedule fixed by the order entered herein on May 8, 1959.

MORRIS, NICHOLS, ARSHT & TUNNELL
/s JAMES M. TUNNELL, JR.
James M. Tunnell, Jr.
3000 duPont Building
Wilmington, Delaware
Attorneys for Defendant

January 30, 1959.

APPENDIX E

TO THE HONORABLE THE JUSTICES OF THE
SUPREME COURT OF THE STATE OF DELAWARE:

IN THE SUPREME COURT OF THE STATE OF DELAWARE

No. 1959

COLUMBIAN FUEL CORPORATION, a Delaware corporation,
TEXACO, Inc., a Delaware corporation,

and

PAN-AMERICAN PETROLEUM CORPORATION, a Delaware
corporation, *Petitioners*

v.

THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND
FOR NEW CASTLE COUNTY, and the HONORABLE ANDREW
D. CHRISTIE, sitting as a Judge of that Court, *Respondents*

Petition for Writ of Prohibition

Petitioners Columbian Fuel Corporation, Texaco, Inc.,
and Pan American Petroleum Corporation, respectfully
petition this Court for the issuance of a writ prohibiting
the respondents, the Superior Court of the State of Dela-
ware in and for New Castle County, and the Honorable
Andrew D. Christie, sitting as a judge of that Court,
from proceeding further in the following civil actions:

C. A. 670, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

Columbian Fuel Corporation, a corporation, Defendant

C. A. 671, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

The Texas Company, a corporation, Defendant

C. A. 708, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

Columbian Fuel Corporation, a corporation, Defendant

C. A. 722, 1958

Cities Service Gas Company, a corporation, Plaintiff,

v.

Pan American Petroleum Corporation, a corporation,
Defendant

The basis for this petition is that a state court has no jurisdiction of the subject matter of these civil actions.

In support hereof petitioners respectfully represent:

1. The plaintiff in Civil Actions 670, 671, 708 and 722, 1958, in the Superior Court of the State of Delaware in and for New Castle County (hereinafter "Civil Actions 670, 671, 708, and 722"), is Cities Service Gas Company, a Delaware corporation (hereinafter referred to as "plaintiff"). Petitioner Columbian Fuel Corporation, a Delaware corporation, is the defendant in Civil Actions 670 and 708, petitioner Texaco, Inc., a Delaware corporation (formerly "The Texas Company"), is the defendant in Civil Action 671, and petitioner Pan American Petroleum Corporation, a Delaware corporation, is the defendant in Civil Action 722 (each is sometimes hereinafter referred to as "defendant").

2. Plaintiff is an interstate pipeline company which purchases natural gas where produced, transports it inter-

state to areas of consumption, and there resells it to local distributing companies. Defendants produce natural gas and sell it to plaintiff for use in its pipeline system.

3. By Civil Actions 670, 671, 708, and 722, plaintiff seeks to recover what it avers were overpayments made by it to defendants for natural gas, \$439,406.44 being the amount demanded in Civil Action 670, \$412,955.95 in Civil Action 671, \$35,995.19 in Civil Action 708, and \$10,324,468.67 in Civil Action 722.

In its complaints plaintiff in effect avers that it was required during the period in question to make the alleged overpayments to the defendants because of a state administrative order, fixing a minimum price for sales of natural gas, which plaintiff alleges has since been determined by the Supreme Court of the United States to be invalid because excluded by a federal statute, the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.* Plaintiff concludes its complaints by alleging that each defendant agreed to make refunds, that the payments had been made involuntarily by plaintiff, and that they constituted an unjust enrichment of each defendant.

In its answer each defendant denied these allegations of the complaints and alleged, among other things, that during the period in question the sales to plaintiff were subject to regulation under the Natural Gas Act and that the only lawful prices for those sales were controlled by the Natural Gas Act or by rate schedules on file with the Federal Power Commission thereunder.

4. After pleading, each defendant established, by discovery and affidavits, that plaintiff and defendant were both natural gas companies subject to regulation by the Federal Power Commission under the Natural Gas Act and that, during the major portion of the period in question, defendant had had a rate schedule on file with the Federal Power Commission, under the Natural Gas Act, for its sales to plaintiff.

5. Each defendant thereafter moved for summary judgment on the ground, among others, that the "*only* lawful price for the sales of natural gas by defendant to plaintiff, referred to in the complaint," either was "fixed by a rate filed with and accepted by the Federal Power Commission, under its regulations prescribed under the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that filed rate," or was "prescribed by the Natural Gas Act, 15 U.S.C.A. §§ 717(a) *et seq.*, and plaintiff does not base its claim upon that Act."

6. Each main brief filed in support of those motions for summary judgment was in substance identical. In its answering brief, which was in substance identical in each of the actions, plaintiff for the first time agreed that the only lawful rates for the sales in issue were the filed rates with the Federal Power Commission. In light of plaintiff's brief, defendants at p. 23 of their reply briefs, which were identical, summed up their positions:

"If Cities [plaintiff] stands on common law bases, claiming a common law price, then Cities' claims are defeated, for as Cities has agreed, it 'can claim no rate as a legal right that is other than the filed rate, . . .'. On the other hand, if Cities does now make a claim on the filed rate, then Cities is out of this court, for there is no power here to adjudicate it."

In their reply brief, defendants then went on to argue that the "federal courts have exclusive jurisdiction of claims based upon the Natural Gas Act and rates on file with the Federal Power Commission under the Act." Moreover, an identical supplemental memorandum, directed solely to the jurisdictional issue, was filed by plaintiff in each of the actions, and an identical answering memorandum was filed by each of the defendants.

7. In support of their jurisdictional argument defendants relied, in part, upon the decision in *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246, 254 (1951), which holds that a purchaser "can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms"; upon § 154.21 of the Federal Power Commission Regulations, which provide that no natural gas company "shall directly or indirectly, demand, charge or collect any rate or charge for or in connection with the . . . sale of natural gas subject to the jurisdiction of the Commission . . . different from those prescribed in its effective tariff and executed service agreements on file with the Commission. . . ."; and upon § 22 of the Natural Gas Act, 15 U.S.C.A. § 717n, which states:

"The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation or order thereunder."

8. On November 12, 1959, after presentation of oral argument in support of defendants' motions for summary judgment in Civil Actions 670, 671, and 708, the Superior Court, acting through the Honorable Andrew D. Christie, sitting as a judge thereof, filed an opinion in those actions in which it decided to deny defendants' motions for summary judgment filed therein. A copy of that opinion is attached as an Exhibit hereof. In its opinion, the Court found that, at least as to the major period involved, the only rate that could be claimed as a legal right was the

rate under the Natural Gas Act but concluded that plaintiff asserted such a claim and that the Superior Court had jurisdiction of it.

9. After the filing of defendants' motions for summary judgment in Civil Actions 670, 671, and 708 and the fixing of a brief and argument schedule thereon, plaintiff moved for summary judgment in each of those cases. A brief schedule was then fixed on plaintiff's motions for summary judgment, but after the presentation of oral argument on defendants' motions for summary judgment in those cases, the Superior Court entered an order in each of those cases directing that the "time for defendant to file its answering brief on plaintiff's pending motion for summary judgment is deferred to and including the twenty-first day after the court files its opinion on the defendant's motion for summary judgment which is presently under advisement," and that further proceedings on plaintiff's motion be likewise deferred.

10. In Civil Action 722 defendant stipulated to a concurrent briefing schedule and the same argument date for presentation of its motion for summary judgment and the motion for summary judgment filed therein by plaintiff. That stipulation concluded with a provision that "[a]n agreement underlying and controlling the above schedule is that this defendant shall not be required to argue or file briefs in respect to the plaintiff's motions for summary judgment prior to argument or the filing of the corresponding briefs on plaintiff's motions for summary judgment in either of its presently pending refund suits against Columbian Fuel Corporation or The Texas Company (1958 Civil Actions No. 670, No. 671 and No. 708, respectively)." Because of that stipulation argument on defendant's motion for summary judgment has not been held in Civil Action 722, but briefs have been filed therein on defendant's motion which are in substance identical to

the briefs filed in Civil Actions 670, 671, and 708, in support of the defendant's motions in those cases which were decided by the opinion of the Superior Court dated November 12, 1959, and the time for the filing of briefs on plaintiff's motion in Civil Action 722 is now also running.

11. Petitioners (heretofore "defendants") aver that jurisdiction of claims concerning rates under the Natural Gas Act is exclusively invested in the federal courts, or in the Federal Power Commission, and that the courts of this state have no jurisdiction thereof.

12. Unless prohibited from so doing by this Honorable Court, the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, will proceed in Civil Actions 670, 671, 708, and 722, to hear and determine claims concerning rates under the Natural Gas Act, and petitioners will be required, in order fully to protect themselves, to litigate those claims in that Court.

13. Petitioners do not have any ordinary remedy, or any other remedy as of right, that is adequate to prevent the Superior Court and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding to hear and determine the merits of those claims or otherwise adequately and effectively to protect their rights.

14. By reason of the foregoing, petitioners are entitled to the entry of an order prohibiting the Superior Court, and the Honorable Andrew D. Christie, sitting as a judge thereof, from proceeding further in Civil Actions 670, 671, 708 and 722.

WHEREFORE, petitioners respectfully ask:

(a) That this Court issue an order, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, staying all further proceedings in Civil Actions 670, 671, 708, and 722, until further order of this Court herein;

(b) That this Court issue a rule, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, requiring them to appear before this Court and show cause, if any they have, why a writ of prohibition should not be awarded herein;

(c) That, after such hearing on its rule to show cause as may be conducted, this Court issue a writ of prohibition, directed to the Superior Court of the State of Delaware in and for New Castle County, and to the Honorable Andrew D. Christie, sitting as a judge thereof, prohibiting them from proceeding further in Civil Actions 670, 671, 708, and 722; and,

(d) That such other orders and processes issue herein, and the petitioners have such other relief, as may be appropriate and necessary in the premises.

COLUMBIAN FUEL CORPORATION
TEXACO, INC.

PAN AMERICAN PETROLEUM CORPORATION

By: JAMES M. TUNNELL, JR.

James M. Tunnell, Jr.

ANDREW B. KIRKPATRICK, JR.

Andrew B. Kirkpatrick, Jr.

MORRIS, NICHOLS, ARSHT & TUNNELL

3000 duPont Building

Wilmington, Delaware

Attorneys for Petitioners

Dated: November 16, 1959.

APPENDIX F

RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW
RATES

Sec. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty

days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company

making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. § 717c].

FIXING RATE AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Pro-*

vided however, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas. [52 Stat. 823 (1938); 15 U.S.C. § 717d]

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical

connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. [52 Stat. 824 (1938); 15 U. S. C. § 717f (a)]

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, ~~or that the present or future public convenience or necessity permit such abandonment.~~ [52 Stat. 824 (1938); 15 U. S. C. § 717f (b)]

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

(d) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (d) (1946)]

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (e) (1946)]

(f) The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization. [56 Stat. 84 (1942); 15 U. S. C. § 717f (f)]

(g) Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company. [56 Stat. 84 (1942); 15 U. S. C. § 717f (g)]

(h) When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000. [61 Stat. 459 (1947); 15 U. S. C. § 717f (h)]

ADMINISTRATION POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

SEC. 16. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things such rules and regula-

tions may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours. [52 Stat. 830 (1938); 15 U.S.C. § 717o]

REHEARING; COURT REVIEW OF ORDERS

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission

for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business; or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.

No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in

the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(c) The filing of an application for rehearing under subsection (a) of this section shall not unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order. [52 Stat. 831 (1938); 15 U.S.C. § 717r]

JURISDICTION OF OFFENSES; ENCOURAGEMENT OF LIABILITIES AND DUTIES

SEC. 22. The District Courts of the United States, the District Court of the United States for the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law, brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any chapter or transaction constituting the viola-

tion occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291-1294 of Title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter. [52 Stat. 833 (1938); 15 U.S.C. § 717u]

APPENDIX G**154.92 FILING OF RATE SCHEDULES BY INDEPENDENT PRODUCER**

(a) Every independent producer who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission shall on or before December 1, 1954, file with the Commission rate schedules, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale effective on June 7, 1954. To each such rate schedule there shall be attached a statement showing actual billing for a recent month in sufficient detail to show how the billing amount is determined.

(b) Every independent producer who, subsequent to the effective date of these rules, proposes to initiate an interstate transportation or sale of natural gas subject to the jurisdiction of the Commission to an existing or new customer shall file with the Commission not less than 30 days nor more than 90 days prior to the date such transportation or sale is proposed to be initiated a rate schedule, as defined in Section 154.93 hereof, setting forth the terms and conditions of service and all rates and charges for such transportation or sale. To each such rate schedule there shall be attached a statement showing estimated sales and billing for the first month of service, in sufficient detail to show method of billing and prices used. The statement shall also give the proposed date of commencement of service. A complete copy of all material shall be furnished to each purchaser under the rate schedule. With each such filing there shall be submitted a list of parties to whom such material has been mailed.

(c) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of paragraphs (a) and (b) of this Section file a state-

ment showing (1) the approximate annual volume involved, (2) the rate charged therefor, (3) the name of the purchaser, and (4) the geographical location (field, county, and State) at which delivery is made.

154.93 RATE SCHEDULE DEFINED

For the purpose of Sections 154.92 through 154.101 hereof "Rate Schedule" shall mean the basic contract and all supplements or agreements amendatory thereof, effective and applicable on and after June 7, 1954, showing the service to be provided and the rates and charges, terms, conditions, classifications, practices, rules and regulations affecting or relating to such rates or charges, applicable to the transportation of natural gas in interstate commerce or the sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission.

154.94 CHANGES IN RATE SCHEDULES

(a) No change shall be made in any rate, charge, or service in effect on and after June 7, 1954, for the interstate transportation or sale of natural gas in interstate commerce subject to the jurisdiction of the Commission by any independent producer required to file rate schedules pursuant to Section 154.92 hereof, without first filing a change in rates pursuant to Section 4(d) of the Natural Gas Act and in accordance with this section.

(b) Every change in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission as of June 7, 1954, and on file with the Commission, or required to be filed pursuant to Section 154.92, or in any rate schedule, rate, charge, classification or service effective or applicable to a sale subject to the jurisdiction of the Commission initiated subsequent to June 7 1954, on file with the Commission, or required to be filed with the Commission pur-

suant to Section 154.92 shall be filed with the Commission in triplicate not less than 30 days nor more than 90 days prior to the date such change in rate schedule is proposed to be made effective.

(c) The operation of any provision of the rate schedule providing for future or periodic changes in the rate, charge, classification, or service after June 7, 1954, or the operation of any like provision in any initial rate schedule filed after June 7, 1954, shall constitute a change in rate schedule.

(d) Any change in any rate schedule, rate, charge, classification, or service provided in a rate schedule in effect on June 7, 1954, which by the terms of said rate schedule is to be operative after June 7, 1954, and prior to September 15, 1954, may be filed on less than thirty days' prior notice, subject nevertheless to the right of the Commission to suspend any such proposed change, if the Commission in any case shall, within thirty days after the rate of filing, find it necessary to suspend such proposed change. If any such proposed change is suspended, the suspension period will begin with the designated effective date of such change.

(e) With each change in rate schedule there shall be submitted reasons, nature, and basis for the proposed change, and the following information and data: (i) the date on which such filing is proposed to be made effective; (ii) a comparative statement of sales made and revenues therefrom by months under the then effective rate schedule and under the proposed changed rate schedule, or rate, charge, classification or service contained therein for the 12 months immediately preceding and for the 12 months immediately succeeding the proposed effective date of the rate schedule tendered for filing. Actual data shall be used wherever possible and any estimates shall be so designated and explained. The statement shall be subdivided by customers and delivery points when more than one is involved.

(f) If the proposed change in a rate schedule will result in an increase in a rate or charge, there shall also be submitted a full statement in support of such increase. A complete copy of all material shall be furnished to each party to the rate schedule. With each such filing there shall be submitted a list of the parties to whom such material has been mailed.

(g) Every independent producer who transports or sells less than 100,000 Mcf annually of natural gas subject to the jurisdiction of the Commission may, in lieu of the requirements of the foregoing paragraphs in this section, file a statement showing (1) the approximate annual volume involved; (2) the rate charged therefor; (3) the name of the purchaser; and (4) the geographical location (field, county and State) at which delivery is made.

157.23 APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY BY INDEPENDENT PRODUCER

(a) Every independent producer of natural gas as that term is defined in section 154.91 who, on or since June 7, 1954, has engaged in the interstate transportation or sale of natural gas subject to the jurisdiction of the Commission, and who has not heretofore obtained from the Commission a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, shall, on or before December 1, 1954, file with the Commission an application (original and 7 copies) in accordance with sections 157.24 through 157.27. The Commission reserves the right to request additional copies. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission amount in the aggregate to less than 1,000,000 Mcf annually, may, in lieu of the foregoing, file by December 1, 1954 an application (original and five copies) containing the information called for by Exhibit A. Pending action by the Commission on an application hereunder, the service for which authorization is sought shall be continued.

(b) No independent producer of natural gas shall, subsequent to the issuance of these rules, engage in any new service with respect to the transportation of natural gas in interstate commerce or sale of such natural gas for resale in interstate commerce subject to the jurisdiction of the Commission without approval of the Commission, evidenced by a certificate of public convenience and necessity authorizing such transportation or sale upon application (original and 7 copies) pursuant to sections 157.24 through 157.27. The Commission reserves the right to request additional copies. Independent producers whose sales of natural gas subject to the jurisdiction of the Commission will amount in the aggregate to less than 1,000,000 Mcf annually may, in lieu of the foregoing, file an application (original and five copies) containing the information called for by Exhibit A. Where the economic feasibility of a new pipeline or important extension or expansion of an existing pipeline depends upon proof of an adequate gas supply, all related applications necessary to effectuate the service shall be filed within time to enable the Commission to consider all related matters concurrently.

[Paragraphs (a) and (b) amended by Order 196, 22 F.R. 2981, April 24, 1957].

(c) Filings hereunder shall be made by signatory operators and signatory owners as provided in § 154.91 of this chapter.

[Paragraph (c) amended by Order 190, 21 F.R. 7616, Oct. 4, 1956]

APPENDIX H

Minutes-meeting
January 26, 1955

53320

The Commission considered the rate filings identified on the attached Tables 1, 2, 3 and 4, IP 78, dated January 18, 1955, and voted to accept all of them, and that for all tax increases filed on or before October 1 1954, notice be waived to establish the requested effective dates; but that for those tax changes filed after October 1, 1954, notice be waived to establish the dates of filing or the dates requested, whichever are later, as the effective dates. The filing companies are to be advised of this action by appropriate form letters.

• • • • •

The Commission considered the rate filings identified on the attached Tables 1, 2, 3 and 4, IP 84, dated January 19, 1955, and voted to accept all of them, and that for tax increases and the other changes reported on Table 4 notice be waived to establish the date of filing or the date requested, whichever is later, as the effective date. The filing companies are to be advised of this action by appropriate form letters.

• • • • •

The Commission considered the rate filings identified on the attached Tables 1, 2, 3, 4 and 5, IP 85, dated January 20, 1955, and voted to accept all of them that notice be waived to establish the requested effective dates for all tax increases filed on or before October 1, 1954; and that for those tax changes filed after October 1, 1954, notice be waived to establish the dates of filing or the dates requested, whichever are later, as the effective date. The filing companies are to be advised of this action by appropriate form letters.

• • • • •

The Commission considered the rate filings identified on the attached Table, IP 90, dated January 25, 1955, and suspended the filings listed on Lines 19 and 20, Sheet 1, until March 1, 1955, and voted to accept all of the other filings, with waiver of notice to be granted only for the tax increases to the extent necessary to permit them to become effective on the dates of filing; the other increases to be effective 30 days after filing, or the proposed effective dates, whichever are later. The filing companies are to be advised of this action by appropriate form letters.

* * * * *

The Commission approved a letter to the Empire District Electric Company, advising, in response to its letter of December 13, 1954, that its Rate Schedules FPC Nos. 65 and 68, and Exhibit A to Rate Schedule FPC No. 68, have been accepted for filing, to become effective on February 7, 1955.

IP NO 85
TABLE NO 1
SHEET 1 OF 23

53472

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

Line No.	Filing Company	Designation Rate Sched-ule No.	Supple-ment No.	Description and Date of Instrument	Date of Transmittal Letter	Filing Date	Buyer	Price June 7, 1954 (¢ per Mcf)	Correspondence Control Serial No.
1	Stanolind Oil & Gas Co.	84	—	Contract	6-23-50	11-15-54	11-16-54	Cities Service Gas Co.	154277
2	511 South Boston Ave.	84	1	Letter	7-28-50	"	"	(Hugoton Field, Kans.)	
3	Tulsa 3, Oklahoma	84	2	Letter	7-28-50	"	"		
4	"	84	3	Letter	8-8-50	"	"		
5	"	84	4	Sup. Agree.	10-3-50	"	"		
6	"	84	5	Sup. Agree.	10-3-50	"	"		
7	"	84	6	Letter	10-11-50	"	"		
8	"	84	7	Sup. Agree.	10-16-50	"	"		
9	"	84	8	Sup. Agree.	11-22-50	"	"		
10	"	84	9	Letter	11-29-50	"	"		
11	"	84	10	Sup. Agree.	12-13-50	"	"		
12	"	84	11	Sup. Agree.	2-5-51	"	"		
13	"	84	12	Sup. Agree.	2-23-51	"	"		
14	"	84	13	Letter	5-18-51	"	"		
15	"	84	14	Sup. Agree.	5-31-51	"	"		
16	"	84	15	Sup. Agree.	6-25-51	"	"		
17	"	84	16	Sup. Agree.	7-2-51	"	"		
18	"	84	17	Letter	7-25-51	"	"		
19	"	84	18	Letter	7-25-51	"	"		
20	"	84	19	Letter	8-29-51	"	"		
21	"	84	20	Letter	8-31-51	"	"		
22	"	84	21	Sup. Agree.	10-16-51	"	"		
23	"	84	22	Sup. Agree.	10-25-51	"	"		
24	"	84	23	Sup. Agree.	2-19-52	"	"		
25	"	84	24	Sup. Agree.	4-11-52	"	"		
26	"	84	25	Sup. Agree.	5-6-52	"	"		
27	"	84	26	Sup. Agree.	6-27-52	"	"		
28	"	84	27	Sup. Agree.	7-17-52	"	"		
29	"	84	28	Sup. Agree.	7-25-52	"	"		
30	"	84	29	Sup. Agree.	11-12-52	"	"		
31	"	84	30	Release	3-16-53	"	"		
32	"	84	31	Sup. Agree.	5-25-53	"	"		
33	"	84	32	Sup. Agree.	5-28-53	"	"		
34	"	84	33	Release	6-8-53	"	"		
35	"	84	34	Letter	6-8-53	"	"		
36	"	84	35	Letter	6-9-53	"	"		
37	"	84	36	Letter	6-9-53	"	"		
38	"	84	37	Sup. Agree.	6-19-53	"	"		
39	"	84	38	Letter	6-26-53	"	"		
40	"	84	39	Letter	6-26-53	"	"		
41	"	84	40	Sup. Agree.	7-7-53	"	"		

IP NO 85
TABLE NO 1
SHEET 2 OF 23

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954

53473

Line No.	Filing Company	Designation Rate Sched-ule No.	Supple-ment No.	Description and Date of Instrument	Date of Transmittal Letter	Filing Date	Buyer	Price June 7, 1954 (¢ per Mcf)	Correspondence Control Serial No.
42	" " " "	84	41	Letter	7-7-53	"	"		154277
43	Stanolind Oil & Gas Co.	84	42	Assignment	7-8-53	11-15-54	11-16-54	Cities Service Gas Co.	
44	511 South Boston Ave.	84	43	Release	7-14-53	"	"	(Hugoton Field, Kans.)	
45	Tulsa 3, Oklahoma	84	44	Letter	7-17-53	"	"	"	
46	" " " "	84	45	Letter	7-27-53	"	"	"	
47	" " " "	84	46	Letter	8-7-53	"	"	"	
48	" " " "	84	47	Release	9-9-53	"	"	"	
49	" " " "	84	48	Sup. Agree.	10-27-53	"	"	"	
50	" " " "	84	49	Letter	11-4-53	"	"	"	
51	" " " "	84	50	Sup. Agree.	11-19-53	"	"	"	
52	" " " "	84	51	Release	11-30-53	"	"	"	
53	" " " "	84	52	Letter	12-9-53	"	"	"	
54	" " " "	84	53	Letter	1-8-54	"	"	"	
55	" " " "	84	54	Letter	1-20-54	"	"	"	
56	" " " "	84	55	Letter	2-8-54	"	"	"	
57	" " " "	84	56	Sup. Agree.	2-15-54	"	"	"	
58	" " " "	84	57	Letter	3-4-54	"	"	"	
59	" " " "	84	58	Letter	3-12-54	"	"	"	11.
60	" " " "	84	59	Letter	4-2-54	"	"	"	
61	" " " "	84	60	Letter	4-27-54	"	"	"	
62	" " " "	84	61	Letter	5-14-54	"	"	"	
63	" " " "	84	62	Letter	5-19-54	"	"	"	
64	" " " "	84	63	Letter	5-19-54	"	"	"	
65	" " " "	84	64	Letter	6-7-54	"	"	"	
66	" " " "	84	65	Letter ¹	6-25-54	"	"	"	
67	" " " "	84	66	Letter ¹	6-25-54	"	"	"	
68	" " " "	84	67	Letter ¹	6-25-54	"	"	"	
69	" " " "	84	68	Letter ¹	7-7-54	"	"	"	
70	" " " "	84	69	Letter ¹	7-9-54	"	"	"	
71	" " " "	84	70	Letter ¹	7-9-54	"	"	"	
72	" " " "	84	71	Letter ¹	7-22-54	"	"	"	
73	" " " "	84	72	Letter ¹	8-3-54	"	"	"	
74	" " " "	84	73	Letter ¹	8-4-54	"	"	"	
75	" " " "	84	74	Letter ¹	8-13-54	"	"	"	
76	" " " "	84	75	Letter ¹	8-19-54	"	"	"	
77	" " " "	84	76	Letter ¹	8-25-54	"	"	"	
78	" " " "	84	77	Kan. C. C. Order ²	12-2-53	"	"	"	

¹ Offer of assignment of leases. No change in price.

² Kansas Corporation Commission Order Affirming Minimum Price of 11.0c per MCF

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

I, Joseph H. Gutride, Secretary of the Federal Power Commission, and official custodian of the records of said Commission, do hereby certify that the attached three pages are true and correct copies of pages numbers 52752, 52756 and 52912 (IP Table No. 61, Sheet 8 of Table 1) from the minutes of the Commission meeting of December 29, 1954.

In witness whereof I have hereunto subscribed my name and caused the seal of the Federal Power Commission to be affixed this 12th day of June A.D., 1959, at Washington, D. C.

J. H. GUTRIDE
Secretary.

52752

MINUTES OF THE THREE THOUSAND EIGHT HUNDRED AND
FORTY-FOURTH MEETING

The Commission convened at 10:00 a.m. on December 29, 1954.

Present: Acting Chairman Draper, Commissioners Smith, Digby and Stueck.

The minutes of the 3836th, 3837th, 3838th, 3839th, 3840th, 3841st and 3843rd meetings of December 14, 15, 16, 17, 20, 21 and 23, respectively, were read and approved. (Acting Chairman Draper, not having participated in the meetings of December 15, 17, 20 and 21, did not vote on the question of approval of the minutes for those dates. Commissioners Smith and Stueck, not having participated in the meeting of December 23, did not vote on the question of approval of the minutes for that date. Commissioner Digby, not having participated in the meeting of December 17, did not vote on the question of approval of the minutes for that date.)

Action was taken, as set forth in the documents appended hereto, in the following matters:

- (1) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220, and G-2378, United Gas Pipe Line Company (Order denying motion of Mississippi River Fuel Corporation to dismiss)
 - (2) Docket Nos. G-1142, G-1508, G-2019, G-2074, G-2210, G-2220 and G-2378, United Gas Pipe Line Company (Order directing issuance of subpoena for the production of documentary evidence) (Commissioner Digby dissenting)
 - (3) Docket No. E-6445, Consolidated Gas Electric Light and Power Company of Baltimore v. Pennsylvania Water & Power Company, Respondent, Public Service Commission of Maryland, Intervenor Docket No. E-6350, Public Service Commission of Maryland v. Pennsylvania Water & Power Company, Susquehanna Transmission Company of Maryland, Safe Harbor Water Power Corporation, Consolidated Gas Electric Light and Power Company of Baltimore, Metropolitan Edison Company, Pennsylvania Power & Light Company, and Philadelphia Electric Company, Respondents Pennsylvania Public Utility Commission, Intervenor (Order allowing service agreements to take effect)
 - (4) Docket No. E-6595, Maine Consolidated Power Company (Order to show cause and fixing date for hearing)
-

MINUTES-MEETING
DECEMBER 29, 1954

52756

- (42) Docket No. G-2534, Alabama-Tennessee Natural Gas Company (Findings and order issuing certificate of public convenience and necessity and approving abandonment of facilities)

- (43) Docket Nos. G-4612 and G-4613, Southern Union Gas Company Docket No. G-4614, Aztec Oil & Gas Company
(Findings and order issuing certificate of public convenience and necessity and dismissing application)
(Commissioner Digby filed a concurring statement)
- (44) Docket No. G-4667, Anderson Natural Gas Company
(Findings and order directing physical connection of facilities and sale of natural gas)
- (45) Docket No. G-4264, Southern Natural Gas Company
(Order dismissing motion for rehearing and reconsideration)
- (46) Docket No. G-2404, Kansas-Nebraska Natural Gas Company, Inc.
(Order approving proposed settlement and accepting revised tariff)
- (47) Docket No. E-6587, Southern Utah Power Company
(Order authorizing issuance of short-term promissory note)

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The Commission approved a letter to the Assistant Secretary of the Interior, approving, in response to his letter of December 8, 1954, the extension to July 6, 1955, of the period of delivery of experimental energy by Bonneville Power Administration, Docket No. E-6571, to the City of Springfield, Oregon, for resale to the National Metallurgical Corporation.

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The Commission considered the rate filings identified on attached Tables 1, 2, 3 and 4, IP 61, dated December 22, 1954, and voted to accept all of the rate schedules for filing; that notice be waived for all tax increases filed on or before October 1, 1954, to establish the requested effective dates; that for those tax increases filed after October 1, 1954, no-

tice be waived only to the extent necessary to establish the dates of filing or the dates requested, whichever are later, as the effective dates; and directed that the filing companies be advised of this action by appropriate form letters.

The Commission approved a letter to the Phillips Petroleum Company, rejecting in response to its letters of November 30, 1954, Rate Schedules 241 and 242.



IP NO 61

SUMMARY OF INDEPENDENT PRODUCER RATE FILINGS
RATES IN EFFECT ON JUNE 7, 1954TABLE NO 1
SHEET 8 OF 35

Line No.	Filing Company	Designation Rate Sched-ule No.	Sup-ple-ment No.	Description and Date of Instrument	Date of Trans-mittal Letter	Filing Date	Buyer	Price June 7, 1954 (¢ per MCF)	Corre-spondence Contrbl Serial No.
146	The Texas Co. Box 2332, Houston 1, Texas	86	—	Statement Undated ¹	10-12-54	11-12-54	Sun Oil Co. East Field, Jim Hogg Co., Tex.	7.045332	153896
147	The Texas Co.	87	—	Statement Undated ¹	10-12-54	11-12-54	Sun Oil Co. Bloomberg Field, Starr and Hidalgo Cos., Tex.	7.045332	153895
148	The Texas Co.	98	—	Contract 9-19-52	9-24-54	11-12-54	Kansas-Nebraska Nat. Gas Co.	11.03	153927
149	" " "	98	1	Bill ⁴ Apr., 1954	9-24-54	11-12-54	" " " " "		
150	The Texas Co.	99	—	Contract 8-3-52	9-24-54	11-12-54	Hugoton Field, Kearney Co., Kan.	11.03	153926
151	" " "	99	1	Bill ⁴ Apr., 1954	9-24-54	11-12-54	Hugoton Plains Gas and Oil Co.		
152	The Texas Co.	100	—	Contract 6-16-49	9-24-54	11-12-54	Hugoton Field, Seward Co., Kan.	11.03	153922
153	" " "	100	1	Letter 9-8-49	9-24-54	11-12-54	Cities Service Gas Co.		
154	" " "	100	2	Bill ⁴ June, 1954	9-24-54	11-12-54	" " " " "		
155	The Texas Co.	101	—	Contract 4-3-50	10-20-54	11-12-54	Hugoton Field, Stevens Co., Kan.	10.220905	153917
156	" " "	101	1	Letter 4-3-50	10-20-54	11-12-54	United Gas Pipe Line Co.		
157	" " "	101	2	" 4-3-50	10-20-54	11-12-54	" " " " "		
158	" " "	101	3	" 2-15-52	10-20-54	11-12-54	" " " " "		
159	The Texas Co.	102	—	Contract 6-1-54	10-26-54	11-12-54	Baxterville Field, Lamar and Marion Cos., Miss.	12.56	153903
160	" " "	102	1	Letter 6-1-54	10-20-54	11-12-54	United Gas Pipe Line Co. " " " " "		
							Duck Lake Field, St. Mary and St. Martin Parishes, La.		

⁶ Does not include a 1¢ per Mcf Louisiana gas gathering tax payable by Seller and reimbursed by Buyer as per contract.

⁵ Includes share of revenue from sales to Gaylord Container Corp. as per letter of 2-15-52.

⁴ Kansas Corporation Commission minimum price indicated by bill.

³ Is Kansas minimum price.

² Price received was prevailing price of Purchaser taking delivery in Sun Field, Starr Co., Texas. This is Aug., 1954 price.

¹ Formal contract not yet executed.

APPENDIX I

FEDERAL POWER COMMISSION
WASHINGTON 25

March 2, 1955

Stanolind Oil & Gas Co.
511 South Boston Avenue
Tulsa 3, Oklahoma

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174-B. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is

without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

/s/ Leon M. Fuquay
LEON M. FUQUAY
Secretary

<i>Description of Document</i>	<i>Date of Letter of Transmittal</i>	<i>Rate Schedule Designation</i>
Contract dated 6/23/50	11/15/54	Stanolind Oil & Gas Co. F.P.C. Gas Rate Sched. No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/28/50	11/15/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/8/50	11/15/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 4 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/3/50	11/15/54	Supplement No. 5 to F.P.C. Gas Rate Sched. No. 84
Letter dated 10/11/50	11/15/54	Supplement No. 6 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/16/50	11/15/54	Supplement No. 7 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 11/22/50	11/15/54	Supplement No. 8 to F.P.C. Gas Rate Sched. No. 84
Letter dated 11/29/50	11/15/54	Supplement No. 9 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 12/13/50	11/15/54	Supplement No. 10 to F.P.C. Gas Rate Sched. No. 84

72a

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Supp. Agree. dated 2/5/51	11/15/54	Supplement No. 11 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 2/23/51		Supplement No. 12 to F.P.C. Gas Rate Sched. No. 84
Letter dated 5/18/51	11/15/54	Supplement No. 13 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/31/51	11/15/54	Supplement No. 14 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 6/25/51	11/15/54	Supplement No. 15 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 7/2/51	11/15/54	Supplement No. 16 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 17 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/25/51	11/15/54	Supplement No. 18 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/29/51	11/15/54	Supplement No. 19 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/31/51	11/15/54	Supplement No. 20 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/16/51	11/15/54	Supplement No. 21 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 10/25/51	11/15/54	Supplement No. 22 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 2/19/52	11/15/54	Supplement No. 23 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 4/11/52	11/15/54	Supplement No. 24 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/6/52	11/15/54	Supplement No. 25 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 6/27/52	11/15/54	Supplement No. 26 to F.P.C. Gas Rate Sched. No. 84

73a

Description of Document	Date of Letter of Transmittal	Rate Schedule Designation
Supp. Agree. dated 7/17/52	11/15/54	Supplement No. 27 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 7/25/52	11/15/54	Supplement No. 28 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 11/12/52	11/15/54	Supplement No. 29 to F.P.C. Gas Rate Sched. No. 84
Release dated 3/16/53	11/15/54	Supplement No. 30 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/25/53	11/15/54	Supplement No. 31 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 5/28/53	11/15/54	Supplement No. 32 to F.P.C. Gas Rate Sched. No. 84
Release dated 6/8/53	11/15/54	Supplement No. 33 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/8/53	11/15/54	Supplement No. 34 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/9/53	11/15/54	Supplement No. 35 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/9/53	11/15/54	Supplement No. 36 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. 6/19/53	11/15/54	Supplement No. 37 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/26/53	11/15/54	Supplement No. 38 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/26/53	11/15/54	Supplement No. 39 to F.P.C. Gas Rate Sched. No. 84
Supp. Agree. dated 7/7/53	11/15/54	Supplement No. 40 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/7/53	11/15/54	Supplement No. 41 to F.P.C. Gas Rate Sched. No. 84
Assignment dated 7/8/53	11/15/54	Supplement No. 42 to F.P.C. Gas Rate Sched. No. 84
Release dated 7/14/53	11/15/54	Supplement No. 43 to F.P.C. Gas Rate Sched. No. 84

74a

<i>Description of Document</i>	<i>Date of Letter of Transmittal</i>	<i>Rate Schedule Designation</i>
Letter dated 7/17/53	11/15/54	Supplement No. 44 to F.P.C. Gas Rate Sched. No. 8
Letter dated 7/27/53	11/15/54	Supplement No. 45 to F.P.C. Gas Rate Sched. No. 8
Letter dated 8/7/53	11/15/54	Supplement No. 46 to F.P.C. Gas Rate Sched. No. 8
Release dated 9/9/53	11/15/54	Supplement No. 47 to F.P.C. Gas Rate Sched. No. 8
Supp. Agree. dated 10/27/53	11/15/54	Supplement No. 48 to F.P.C. Gas Rate Sched. No. 8
Letter dated 11/4/53	11/15/54	Supplement No. 49 to F.P.C. Gas Rate Sched. No. 8
Supp. Agree. dated 11/19/53	11/15/54	Supplement No. 50 to F.P.C. Gas Rate Sched. No. 8
Release dated 11/30/53	11/15/54	Supplement No. 51 to F.P.C. Gas Rate Sched. No. 8
Letter dated 12/9/53	11/15/54	Supplement No. 52 to F.P.C. Gas Rate Sched. No. 8
Letter dated 1/8/54	11/15/54	Supplement No. 53 to F.P.C. Gas Rate Sched. No. 8
Letter dated 1/20/54	11/15/54	Supplement No. 54 to F.P.C. Gas Rate Sched. No. 8
Letter dated 2/8/54	11/15/54	Supplement No. 55 to F.P.C. Gas Rate Sched. No. 8
Supp. Agree. dated 2/15/54	11/15/54	Supplement No. 56 to F.P.C. Gas Rate Sched. No. 8
Letter dated 3/4/54	11/15/54	Supplement No. 57 to F.P.C. Gas Rate Sched. No. 8
Letter dated 3/12/54	11/15/54	Supplement No. 58 to F.P.C. Gas Rate Sched. No. 8
Letter dated 4/2/54	11/15/54	Supplement No. 59 to F.P.C. Gas Rate Sched. No. 8
Letter dated 4/27/54	11/15/54	Supplement No. 60 to F.P.C. Gas Rate Sched. No. 8

75a

<i>Description of Document</i>	<i>Date of Letter of Transmittal</i>	<i>Rate Schedule Designation</i>
Letter dated 5/14/54	11/15/54	Supplement No. 61 to F.P.C. Gas Rate Sched. No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 62 to F.P.C. Gas Rate Sched. No. 84
Letter dated 5/19/54	11/15/54	Supplement No. 63 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/7/54	11/15/54	Supplement No. 64 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 65 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 66 to F.P.C. Gas Rate Sched. No. 84
Letter dated 6/25/54	11/15/54	Supplement No. 67 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/7/54	11/15/54	Supplement No. 68 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/9/54	11/15/54	Supplement No. 69 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/9/54	11/15/54	Supplement No. 70 to F.P.C. Gas Rate Sched. No. 84
Letter dated 7/22/54	11/15/54	Supplement No. 71 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/3/54	11/15/54	Supplement No. 72 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/4/54	11/15/54	Supplement No. 73 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/13/54	11/15/54	Supplement No. 74 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/19/54	11/15/54	Supplement No. 75 to F.P.C. Gas Rate Sched. No. 84
Letter dated 8/25/54	11/15/54	Supplement No. 76 to F.P.C. Gas Rate Sched. No. 84
Kan. C.C. Order dated 12/2/53	11/15/54	Supplement No. 77 to F.P.C. Gas Rate Sched. No. 84

FEDERAL POWER COMMISSION

The Texas Co.
Box 2332
Houston 1, Texas

Washington 25

Feb. 7, 1955

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing.

In the event that any of the documents comprising the listed rate schedules contain provisions for future automatic adjustments in rates and charges based upon new or increased taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the rates being charged June 7, 1954, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 174. The Act and the Commission's rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice effecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

Very truly yours,

LEON M. FUQUAY
Leon M. Fuquay
Secretary

Description of Document	Date of Letter or Transmittal	Rate Schedule Designation
Statement undated	9/24/54	The Texas Co. F.P.C. Gas Rate Sched. No. 68
Letter 12/20/51	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 68
Bill April 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 68
Statement undated	9/24/54	F.P.C. Gas Rate Sched. No. 69
Letter 12/17/51	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 69
Bill June 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 69
Contract 5/15/50	9/24/54	F.P.C. Gas Rate Sched. No. 70
Bill June 1954	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 70
Statement 10/6/54	9/24/54	F.P.C. Gas Rate Sched. No. 71
Contract 10/1/50	9/24/54	F.P.C. Gas Rate Sched. No. 72
Sup. Agree. 3/30/51	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 72
Bill April 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 72
Statement 10/20/54	10/20/54	F.P.C. Gas Rate Sched. No. 73
Contract 6/11/52	10/20/54	F.P.C. Gas Rate Sched. No. 74
Statement 10/20/54	10/20/54	F.P.C. Gas Rate Sched. No. 75
Statement 10/20/54	10/20/54	F.P.C. Gas Rate Sched. No. 77
Statement 10/20/54	10/20/54	F.P.C. Gas Rate Sched. No. 78
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 79
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 80
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 81

<i>Description of Document</i>	<i>Date of Letter of Transmittal</i>	<i>Rate Schedule Designation</i>	<i>Description of Document</i>
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 82	Contract 6/25/47
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 83	Contract 5/26/41
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 84	Contract 9/9/49
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 85	Sup. Agree. 9/9/49
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 86	Sup. Agree. 6/8/53
Statement undated	10/12/54	F.P.C. Gas Rate Sched. No. 87	
Contract 9/19/52	9/24/54	F.P.C. Gas Rate Sched. No. 98	Bill April 1954
Bill April 1954	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 98	Contract 9/9/49
Contract 8/3/52	9/24/54	F.P.C. Gas Rate Sched. No. 99	Sup. Agree. 9/9/49
Bill April 1954	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 99	Sup. Agree. 9/22/50
Contract 8/16/49	9/24/54	F.P.C. Gas Rate Sched. No. 100	Bill April 1954
Letter 9/8/49	9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 100	Contract 9/9/49
Bill June 1954	9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 100	Sup. Agree. 9/9/49
Contract 4/3/50	10/20/54	F.P.C. Gas Rate Sched. No. 101	Sup. Agree. 10/22/52
Letter 4/3/50	10/20/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 101	Bill June 1954
Letter 4/3/50	10/20/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 101	Contract 9/9/49
Letter 2/15/52	10/20/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 101	Sup. Agree. 9/9/49
Contract 6/1/54	10/20/54	F.P.C. Gas Rate Sched. No. 102	Sup. Agree. 11/18/52
Letter 6/1/54	10/20/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 102	Bill April 1954
Contract 4/26/48	9/24/54	F.P.C. Gas Rate Sched. No. 103	Contract 9/9/49

<i>Date of Letter of Transmittal</i>	<i>Rate Schedule Designation</i>
9/24/54	F.P.C. Gas Rate Sched. No. 104
9/24/54	F.P.C. Gas Rate Sched. No. 105
9/24/54	F.P.C. Gas Rate Sched. No. 106
9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 106
9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 106
9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 106
9/24/54	F.P.C. Gas Rate Sched. No. 107
9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 107
9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 107
9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 107
9/24/54	F.P.C. Gas Rate Sched. No. 108
9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 108
9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 108
9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 108
9/24/54	F.P.C. Gas Rate Sched. No. 109
9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 109
9/24/54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 109
9/24/54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 109
9/24/54	F.P.C. Gas Rate Sched. No. 110
9/24/54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 110

<i>Description of Document</i>	<i>Date of Letter or Transmittal</i>	<i>Rate Schedule Designation</i>
Sup. Agree. 5 18 50	9 24 54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 11
Bill June 1954	9 24 54	Supplement No. 3 to F.P.C. Gas Rate Sched. No. 11
Contract 5 23 45	9 24 54	F.P.C. Gas Rate Sched. No. 11
Sup. Agree. 8 1 52	9 24 54	Supplement No. 1 to F.P.C. Gas Rate Sched. No. 11
Bill April 1954	9 24 54	Supplement No. 2 to F.P.C. Gas Rate Sched. No. 11
Contract 1/20/53	9 24 54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17 54	F.P.C. Gas Rate Sched. No. 11
Statement 11 17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 11
Statement 11/17/54	11/17/54	F.P.C. Gas Rate Sched. No. 12

FEDERAL POWER COMMISSION

Washington 25

The Texas Company
P. O. Box 2332
Houston 1, Texas

Sept. 8, 1957

Gentlemen:

This is to advise you that the rate filings listed at the bottom of this letter have been accepted for filing, that notice is hereby waived and that such rate schedules shall be effective as of the dates shown.

In the event that any of the documents comprising the

listed schedules contains provisions for future automatic adjustments in rates and charges based upon new or incorporated taxes, prices paid for gas by or to others, price re-determination provisions, or any similar provision, your attention is directed to the fact that such provisions, when invoked to change the effective rates and charges, will constitute a change in such rates and charges within the meaning of Section 4(d) of the Natural Gas Act and Section 154.94 of the Commission's Regulations under such Act as promulgated by this Commission's Order No. 176-8. The Act and the Commission's Rules require that such changes be filed with the Commission not more than 90 days nor less than 30 days prior to the proposed effective date thereof.

This acceptance for filing shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, as amended; nor shall it be construed as constituting approval of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in the rate filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

In future correspondence with the Commission concerning the rate schedules listed below, please refer to the FPC Gas Rate Schedule designation furnished you herewith, including the name of the independent producer and the rate schedule and supplement numbers.

By direction of the Commission.

J. H. GUTRIDE
Secretary

RATE SCHEDULE DESIGNATION

THE TEXAS COMPANY

Description of Document	Date of Letter of Transmittal	FPC Gas Rate Schedule No.	Supplement No.	Effective Date
Notice of Change Undated	6-13-57	72	5	7-1-57
Notice of Change Undated	6-13-57	98	4	7-1-57
Notice of Change Undated	6-13-57	99	4	7-1-57
Notice of Change Undated	6-13-57	100	5	7-1-57
Notice of Change Undated	6-13-57	106	6	7-1-57
Notice of Change Undated	6-13-57	107	6	7-1-57
Notice of Change Undated	6-13-57	108	6	7-1-57
Notice of Change Undated	6-13-57	109	4	7-1-57
Notice of Change Undated	6-13-57	70	4	7-1-57
Notice of Change Undated	6-13-57	110	6	7-1-57
Notice of Change Undated	6-13-57	112	3	7-1-57

cc: F. E. Gallagher, Attorney
 The Texas Company
 195 E. 42d Street
 New York 17, New York

Mr. M. L. Terry
 The Texas Company
 P. O. Box 2420
 Tulsa 2, Oklahoma

APPENDIX J

A List of Some of the Cases Pending in Various States and Federal Courts Involving Issues Similar to the Issue in This Case

DELAWARE (Suits in Superior Court, New Castle County):

- Northern Natural Gas Co. v. Champlin Oil & Refining Co.;
- Northern Natural Gas Co. v. Hugoton Plains Gas & Oil Co.;
- Northern Natural Gas Co. v. White Eagle Oil Co.;
- Northern Natural Gas Co. v. The Texas Co.;
- Northern Natural Gas Co. v. Republic Natural Gas Co.;
- Cities Service Gas Co. v. Western Natural Gas Co.;
- Cities Service Gas Co. v. Columbian Fuel Co.;
- Cities Service Gas Co. v. The Texas Co.;
- Cities Service Gas Co. v. Pan American Petroleum Co.;
- Colorado Interstate Gas Co. v. White Eagle Oil Co.;

IOWA:

- Northern Natural Gas Co. v. Cities Service Oil Co., District Court, Pottawatomie Co., Iowa;

KANSAS (Suits in United States District Court):

- Northern Natural Gas Co. v. R. D. Burris (Topeka);
- Northern Natural Gas Co. v. Trees Oil Co. and M. L. Benedum (Topeka);
- Northern Natural Gas Co. v. Walter F. Kuhn (Topeka);
- Northern Natural Gas Co. v. Courtney B. Davis and Marcelle G. Davis (Topeka);
- Northern Natural Gas Co. v. Girard J. Neuner (Topeka);
- Northern Natural Gas Co. v. Howard Kuhn (Topeka);
- Northern Natural Gas Co. v. H. M. Gillespie (Topeka);
- Northern Natural Gas Co. v. John R. LeBosquet (Topeka);
- Northern Natural Gas Co. v. H. M. Gillespie and John R. LeBosquet (Topeka);

Northern Natural Gas Co. v. Alf M. Landon (Topeka);
 Northern Natural Gas Co. v. Margaret Landon Mills
 (Topeka);
 Cities Service Gas Co. v. Magnolia Petroleum Co.
 (Wichita);

KANSAS (Suits in State District Courts):

The Stevens County Oil & Gas Co. et al. v. Panhandle
 Eastern Pipe Line Co. (Stevens County);
 Kansas-Nebraska Natural Gas Co. v. H. M. Gillespie et al.
 (Sedgwick County);
 Kansas-Nebraska Natural Gas Co. v. D. R. Lauck et al.
 (Sedgwick County);
 Kansas-Nebraska Natural Gas Co. v. Ben F. Brack
 (Sedgwick County);
 Kansas-Nebraska Natural Gas Co. v. William S. Milner
 et al. (Sedgwick County);
 Kansas-Nebraska Natural Gas Co. v. D. R. Lauck Oil Co.
 et al. (Sedgwick County);
 Fred Shore & Hazel Shore v. Western Natural Gas Co.
 and Cities Service Gas Co. (Seward County);
 G. L. Hayward and Inez Hayward v. Island Gas, Inc.,
 Walter Kuhn and Panhandle Eastern Pipe Line Co.
 (Morton County);

MINNESOTA (Suit in United States District Court):

Northern Natural Gas Co. v. John B. Hawley, Jr., United
 States District Court, Fourth Division;

NEBRASKA (Suits in State Court):

Northern Natural Gas Co. v. Pan American Petroleum
 Corp. (Lancaster County);
 Kansas-Nebraska Natural Gas Co. v. White Eagle Oil Co.
 (Lancaster County);

(Suits in United States District Court):

Northern Natural Gas Co. v. Magnolia Petroleum Corp.
 (Lincoln);

Northern Natural Gas Co. v. Saturn Oil & Gas Corp.
(Lincoln);

Northern Natural Gas Co. v. United Producing Co.
(Lincoln);

Kansas-Nebraska Natural Gas Co. v. Cities Service Oil
Co. (Civil No. 0674);

Kansas-Nebraska Natural Gas Co. v. Pan American Pe-
troleum Corp. (Civil No. 0675);

OKLAHOMA (United States District Court):

Northern Natural Gas Co. v. William Broadhurst
(Tulsa);

Northern Natural Gas Co. v. Anne Parker (Western
District);

Cities Service Gas Co. v. J. M. Huber Corp. (Western
District);

Cities Service Gas Co. v. United Producing Co. (Western
District);

Cities Service Gas Co. v. Cabot Carbon Co. (Western
District);

Colorado Interstate Gas Co. v. Socony Motor Oil Co.
(Northern District);

OKLAHOMA (State District Court, Tulsa):

Colorado Interstate Gas Co. v. Broadhurst;

Colorado Interstate Gas Co. v. Helmerich;

FLORIDA (United States District Court):

Colorado Interstate Gas Co. v. Gillory;

COLORADO (United States District Court):

Colorado Interstate Gas Co. v. Sinclair Oil & Gas Co.;

**COLORADO (State District Court in and for the City and
County of Denver):**

Colorado Interstate Gas Co. v. Pan American Petroleum
Corp.;

Colorado Interstate Gas Co. v. Cities Service Oil Co.